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Supreme Court of the United States

Fall Term, 1966

No. 890

CHARLES RONALD GRAY,

Petitioner,

vs.

STATE OF NORTH CAROLINA,

Respondent.

Brief of the Respondent, State of North Carolina, in Opposition to Petition For Writ of Certiorari.

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OPINION BELOW

The Opinion of the Supreme Court of North Carolina is reported as STATE vs. GRAY, 268 N. C. 69, 150 S. E. 2d 1, (1966). The Opinion of the Supreme Court of North Carolina is a part of the record filed by the petitioner in this cause.

The judgment of the trial court, which is a court of general jurisdiction, is not reported in any official publication. It can be found in the State Record certified to this Court by the Petitioner. The Petitioner invoked the jurisdiction of this Court under the provisions of 28 U. S. Code, Section 1257 (3). The Respondent, State of North Carolina, denies that the Petitioner has shown sufficient basis for this Court to exercise its jurisdiction.

QUESTION PRESENTED

DOES MIRANDA vs. ARIZONA, 384, U. S. 436, 86 Sup. Ct. 1602, 16 L. Ed. 2d 694, HOLD THAT, AS A MATTER OF

LAW, IRRESPECTIVE OF A DEFENDANT'S ACTUAL ABILITY TO EMPLOY COUNSEL, NO STATEMENT MADE BY HIM TO AN OFFICER, WHILE IN THE CUSTODY OF THE OFFICER AND IN RESPONSE TO A QUESTION BY THE OFFICER, MAY BE INTRODUCED IN EVIDENCE AGAINST THE DEFENDANT UNLESS IT AFFIRMATIVELY APPEARS THAT THE OFFICER FIRST TOLD THE DEFENDANT THAT IF HE WAS AN INDIGENT PERSON, COUNSEL WOULD BE APPOINTED TO REPRESENT HIM?

STATEMENT OF THE CASE

Petitioner was tried and convicted upon an indictment charging him and his cousin, Van Gray, with felonious breaking and entering and larceny allegedly occurring on July 27, 1965. Petitioner was originally tried, along with Van Gray, at the September-October 1965 Session of Martin County Superior Court. Petitioner entered a plea of guilty after signing a waiver of counsel. Petitioner subsequently filed a Petition for a Post-Conviction review, and on January 19, 1966 a new trial was ordered as to him.

Petitioner was again tried upon the aforesaid indictment at the June 1966 Session of Martin County Superior Court. His trial began on June 15, 1966 and the jury returned its verdict of guilty as charged on June 16, 1966. He was sentenced on each count to imprisonment of not less than four (4) nor more than six (6) years, the two sentences to run concurrently. Petitioner then appealed his conviction to the Supreme Court of North Carolina, where his conviction was upheld. Petitioner was represented at his second trial and upon his appeal by two privately retained counsel.

At this second trial, Deputy Sheriff Jerry V. Beach and Police Officer Mike Roberson were permitted, over objections, to testify to certain statements made by the Petitioner while he was in custody. Petitioner contends that the admission of this evidence violated his rights under the United States Constitution as interpreted in the MIRANDA decision.

ARGUMENT

Before the testimony of either officer as to the statements by defendant was admitted, a *voir dire* examination was conducted in the absence of the jury to determine the admissability of the statements. The Court, after hearing the evidence, found:

> "The Court finds that the defendant was advised at the time of his arrest or immediately thereafter that he had a right to have and confer with counsel. That he had a right to remain silent or to make a statement and that any statement he made might be used against him. The Court being of the opinion that the defendant fully understood his rights, finds that any statement that the defendant made at the time or immediately thereafter to Deputy Sheriff Beach was freely, voluntarily and understandingly made, without any promise of reward, duress or other pressure."

On information given him by Van Gray that he and Petitioner, Charles Gray, had broken and entered the building owned by T. A. Weaver and had taken certain personal property therefrom, Deputy Beach searched for Petitioner and found him at the home of Mr. Weaver. Petitioner had gone to Mr. Weaver's home, accompanied by his cousin, Billy Gray, and "told him that he had the stuff and wanted to apologize", and asked Mr. Weaver to drop the charges. At the Weaver home, and in the presence of Mr. Weaver and Billy Gray, Deputy Beach placed Petitioner under arrest and "told him he was charged with a felony, breaking and entering". Prior to any statements made by Petitioner to Deputy Beach, he was informed by Deputy Beach that he "had a right to remain silent", that "anything he said might be used against him in a court of law", that "he could employ counsel", and that "if he wanted time to get a lawyer before we proceeded he could have that". The Petitioner replied that he did not want a lawyer and that he wanted to give the articles back to Mr. Weaver. The Petitioner then accompanied Deputy Beach, Mr. Weaver and Van Gray to the building which had

been broken and entered, and admitted his participation in the breaking and entering and larceny.

Police Officer Roberson assisted Deputy Beach in the investigation of this matter. Officer Roberson testified that on the night Petitioner was arrested, he had a conversation with Petitioner at the Police Station in which Petitioner admitted that he and Van Gray had gone in Mr. Weaver's house and had taken certain property. Van Gray was present when Petitioner made this admission. Before Officer Roberson was allowed to testify as to this conversation, a *voir dire* examination in the absence of the jury was conducted and the Court found:

> "The Court finds that at the time he made a statement to Sgt. Roberson and Deputy Sheriff Beach the defendant had been advised of his rights to have counsel, advised that any statement he made might be used against him and that he understood his rights."

It is stated in Petitioner's Brief, at page 8: "It is conceded by defendant that he was advised that he had a right to remain silent, the effect of making a statement and of his right to an attorney. These three requirements are met and they appear both in the testimony of the arresting officer and in the Court's finding of fact".

The record does not reflect that Petitioner was informed that if he were an indigent person he was entitled to have counsel appointed for him and to confer with such court appointed counsel prior to making any statement to law enforcement officers, and the trial judge made no finding that Petitioner was so advised.

However, the record does reflect that Petitioner was not an indigent at the time of his arrest and is not presently an indigent. Petitioner was never confined in jail, but was allowed bond which was posted by or for him shortly after his arrest. (STATE RECORD, p. 47). At the time of his arrest in August 1965, he was a high school graduate, and thereafter attended East Carolina College for one year.

(STATE RECORD, p. 50). He was represented at his trial by two privately retained counsel. He was represented in his appeal to the North Carolina Supreme Court by two privately retained counsel. He is represented by privately retained counsel in presenting this Petition for Certiorari to this Court.

The statements made by Petitioner in this case were not the result of an interrogation atmosphere as condemned by the MIRANDA Decision. The statements were not made while Petitioner was in jail or in the presence of police officers alone, or after prolonged questioning.

It is submitted that MIRANDA does not hold that an incriminating statement, freely and voluntarily made, may not be admitted into evidence when made by one who is not an indigent and is not unable to consult private counsel if he chooses, solely because he was not advised of a right he would have had if he had been an indigent. As stated by the North Carolina Supreme Court in the opinion below, at 268 N. C. 83:

> "It cannot violate the defendant's constitutional right against self-incrimination for the officers in their interrogation to fail to advise him of rights which some other person might have which he does not have in view of his own circumstances."

It is respectfully submitted that Petitioner's incriminating statements were properly admitted into evidence.

CONCLUSION

Based on the foregoing argument, Respondent, State of North Carolina, prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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